

MINUTES

MONTANA SENATE 58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **CHAIRMAN DALE MAHLUM**, on March 19, 2003 at 9 A.M., in Room 422 Capitol.

ROLL CALL

Members Present:

Sen. Dale Mahlum, Chairman (R)
Sen. Mike Sprague, Vice Chairman (R)
Sen. Sherm Anderson (R)
Sen. Vicki Cocchiarella (D)
Sen. Kelly Gebhardt (R)
Sen. Ken (Kim) Hansen (D)
Sen. Sam Kitzenberg (R)
Sen. Glenn Roush (D)
Sen. Don Ryan (D)
Sen. Carolyn Squires (D)

Members Excused: Sen. Bob Keenan (R)
Sen. Fred Thomas (R)

Members Absent: None.

Staff Present: Sherrie Handel, Committee Secretary
Eddy McClure, Legislative Branch

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 296, 2/3/2003; HB 315,
1/31/2003; HB 319, 2/5/2003
Executive Action: HB 174, HB 122, HB 315, HB 319

HEARING ON HB 296

Sponsor: REPRESENTATIVE LARRY JENT

Proponents: Travis Ahner, Montana Trial Lawyers Association
Tom Murphy, Attorney, Great Falls
Susan Good, representing neurosurgeons &
orthopedic surgeons
Don Judge, Teamsters Local 190
Verna Kelley, injured worker

Opponents: Nancy Butler, Montana State Fund
Jacqueline Lenmark, American Insurance
Association, Liberty Northwest and American
Alliance of Insurers
George Wood, Montana Self-Insurers Association
Bob Worthington, Montana Municipal Insurance
Authority
Sean Bubb, Montana School Boards Association

Informational Witnesses: Jerry Kaek, Employee Relations Division,
Department of Labor and Industry

Opening Statement by Sponsor:

REPRESENTATIVE LARRY JENT, HD 29, Bozeman, explained the purpose of the bill was to revise attorney fees for medical expenses in work comp cases. He said often times the worker incurs medical expenses before eligibility for workers' compensation medical benefits has been determined. He said currently if an attorney takes on a workers' compensation claim a portion of the medical benefits goes to pay the attorney and the medical provider only gets 69 percent. He said this bill only covers those cases that go before the Workers' Compensation court and not those settled with the adjustor. He said it is not fair that the provider does not receive all that he is entitled to but also it is unfair that the attorney does not get paid for their efforts, etc. He said this bill makes sure that the attorney gets paid for his efforts and the health care provider gets paid and the insurer who wrongly denied the medical benefits pays the attorney fees. He stated that these cases for attorneys are not lucrative to begin with. He felt that injured workers should not be required to walk away from needed medical care and workers should have the right to be able to challenge these insurance companies who deny health care. He discussed the fiscal note and the assumptions. He said if medical bills are paid in a timely manner, under the 30 days, there are no attorney fees paid. He said this bill only deals with cases that are headed for the workers' comp. court. He said

this is one area that is wrong in the fiscal note under the assumptions. He said for medical benefits there are no requirements of unreasonableness and the fiscal note does not say that. He read line 27, page 1 and explained it. He explained section 2 of the bill about the costs.

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Proponents' Testimony:

Travis Ahner, Montana Trial Lawyers Association, stood in support of the bill. He was asked by the Montana Medical Association to also voice their support of **HB 296**. He said when an attorney takes a case to the workers' compensation court and gets the medical benefits a portion of those benefits are paid to the attorney as part of the fee. He said if he had a \$100 medical bill, the doctor would be paid \$80 and the attorney would get \$20. He said this bill is asking that the doctor get paid the full amount and the attorney gets his fees. He said it is nothing more for the attorney only making sure that the doctor is paid in full. He said this only occurs when the insurance company denies the benefits and the workers' compensation court says otherwise.

Tom Murphy, Attorney, Great Falls, said the function of this bill is to represent a small number of people who cannot find representation. He said 9 out of 10 people who need medical treatment cannot find representation to bring their claims to the court so that they can get the court to order the medical treatment. He said most of these claims are under a thousand dollars and most lawyers will not take such small cases. He said if there is a \$100 medical bill the current law says that the doctor will get 65 percent of that. He said if it is litigated then 25 percent of that is taken out for the attorney. He said the doctor would only receive 45 to 50 percent of the face value of the service. He said many doctors will not provide the workers compensation service anymore because of this. He stated that under the current bill if a medical expense is denied it would go to the compensation court and if the judge decided that is was reasonable and necessary medical care then the judge would order that the medical bills be paid. He said the insurance company would have to pay the cost of the lawyer to bring the claim and the doctor would not have to take a further deduction on the face value of his treatment. He said if the insurance companies know that they cannot deny these claims then there is going to be better medical care and more rapid delivery of it.

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Susan Good, representing neurosurgeons and orthopedic surgeons, said the primary interest of her group was on page 2, line 27, of the bill. She explained doctors are providing top quality service at a fire sale price. She said it is causing problems in getting quality health care and is a cost share problem for everyone.

Don Judge, Teamsters Local 190, spoke in support of the bill and discussed the Injured Resource Workers Council, which was made up of injured workers throughout the state of Montana. As part of the operation of the organization, the changes to the workers compensation system was discussed around the state and several injured workers showed up to talk about the problems they were having with the workers' compensation system. He said one of the most frequent problems was getting an attorney to handle their cases especially if they were small medical claims. He said many workers were finding denied access to legitimate services for legitimately incurred job injuries. He said this legislation is not going to drive the cost for the workers' compensation system out of whack. He discussed the fiscal note. He said this legislation applies only to those cases in which an insurer has been denied a reasonable medical benefit.

Verna Kelley, injured worker, let the committee know about her injury, which happened three years ago when she was working for Golden Triangle and slipped on the ice. She stated that she began having problems when she asked for assistance with pain management. She was told previous treatments were enough; however, she wanted to work and function normally. She was offered \$5000 as a settlement, but that amount wouldn't even begin to pay her medical bills, so she enlisted the services of an attorney. She said they have been to mediation twice and if it had not been for her attorney she would not be in the shape that she is in now. She said her doctor would send in a request for physical therapy and it would be six weeks before the insurance company would reply. She said she also put in for lost wages and often times the insurance company would say that they had not received the request. She said it is no fun to sit at home and be in pain, etc. and then have to fight for medical treatment.

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Opponents' Testimony:

Nancy Butler, Montana State Fund, said that since 1987, the law has provided that the insurance companies will pay the attorney fees of injured workers if the insurance company is determined to be unreasonable in the position that they have taken before the

court. She said this bill would require attorney fees on medical benefits even if the insurance company's position was found to be reasonable. She stated they do have mediation in the workers' compensation act. The Department of Labor acts as the mediator and an attorney does not have to be present and it clears many of these issues for injured workers without involving an attorney. She said if the court losses in front of the workers' compensation court they would pay the cost of litigation for the attorney. She said an injured worker also never has to pay the insurance attorney whether they win or lose the case. She discussed the fiscal note.

Jacqueline Lenmark, American Insurance Association, Liberty Northwest, and American Alliance of Insurers, specifically addressed her comments made about the National Council on Compensation Insurance, Inc. (NCCI) to the committee. She said the organization assists all insurance companies who write workers' compensation in Montana in formulating their rates. She stated it is a neutral and statistical organization and its sole purpose is to evaluate lost cost information and provide it to insurers. She said the NCCI is designated as the only advisory committee to provide this service to Montana Insurance Companies. She said NCCI files all of the lost cost information that is recorded to it with the insurance commissioner on an annual basis and insurers can then develop their rates from that information. She discussed title 33-16-1023 and 33-16-1024.

George Wood, Montana Self-Insurers Association, made the comment that workers' compensation is paid by the employer not the insurance companies. He explained the current law vs. what this law would do if it were passed. He also discussed fees and compensation. He said if this pertains to medical issues only that is one thing but if it is tied to all of the other issues then it is another. He said the 30 days to settle could be a problem because that would eliminate going to court because the fee still has to be set by the court. He said the fee is not a contingency fee but an hourly rate. He said the Montana Chamber of Commerce also opposes this bill.

Bob Worthington, Montana Municipal Insurance Authority, rose in opposition of the bill.

Sean Bubb, Montana School Boards Association, said this bill would increase the costs. He said this bill would be attached to the public school system and they are already having a tough time financially without having more. He discussed the current statute of workers' compensation.

Informational Witness Testimony:

Jerry Keck, Employee Relations Division, Department of Labor and Industry, explained that their department is responsible for medical fee schedules for hospitals and non-hospital providers. He said that fee schedules were developed in 1993 when there were major changes in the workers' compensation law. He said hospital reimbursements may be as low as 58 percent and other hospitals have reimbursement rates that go up to 95 percent. He said non-hospital fee schedules have seven disciplinary areas and they are adjusted each year. He felt the reimbursement rates for these areas were around 70 percent. He said they are also involved in the mediation process and out of the 32,000 claims that are filed each year about a 1000 claims end up in mediation and 80 percent of those are resolved. He said as a result there is about 250 claims that go to the workers' compensation court. He said they also regulate attorney fees and every time an injured worker hires an attorney they have to file an attorney fee agreement with the department. He explained this agreement.

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Questions from Committee Members and Responses:

SENATOR VICKI COCCHIARELLA asked for an example of when an insurer received a reimbursement from a health care provider.

REP. JENT said he did not know for sure. **Ms. Good** said the orthopedic surgeons were having problems with this because if a doctor received \$100, twenty dollars was being taken out as attorney fees and it was being taken out of the provider's hide.

SEN. COCCHIARELLA asked if the issue here is that the attorney gets their 20 percent and the doctor gets his full 100 percent that they are entitled to. **Ms. Good** said the physicians want to make sure they get what they are entitled to.

SENATOR SHERM ANDERSON referred to the opposition's viewpoint of the NCCI and he asked about the fiscal note. **REP. JENT** said the NCCI was requested by the State Fund to complete an analysis. He said one gets the idea that they did the fiscal note and that is not true because State Fund did the fiscal note. He said they do not have an analysis from this company and he feels one does not exist. He said there are about 30 cases that go before the workers compensation court each year according to the fiscal note that require an attorney. He felt assumption number 11 was wrong because there are not that many cases that require an attorney.

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SEN. ANDERSON said that is what NCCI does is generate analysis's. He said to come to any conclusion they would have to look at an analysis and by law that is what workers' compensation has to follow. **REP. JENT** discussed assumption #11 on the fiscal note. He said 80 percent of the cases are resolved before they even get to mediation. He said 250 go to mediation but if they are settled before the 30-day grace period there are no attorney fees. He didn't feel this bill would add 25 percent to medical expenses, etc. **SEN. ANDERSON** said the last portion of assumption 11 says with an attorney and he felt that is what that means. **REP. JENT** said if a claim with attorney involvement goes to mediation and it is settled that is not part of this bill.

SEN. COCCHIARELLA discussed her concern about the 30-day provision. She said attorney fees do get paid if an attorney is hired and they are able to get the person more out of mediation. She said if an attorney represents a claimant and they are going to mediation and normally the attorney works with the claim adjustor to try and settle those issues. She said sometimes the adjustor may have to go out and hire an attorney and that should be part of the fiscal note for at least the self-insured clients. She used the example of an attorney and an adjustor who continue to work together after mediation and the court date is set 39 days out. She said with this language it says 30 days to settle a claim and they will quit trying to settle a claim even though there are nine days left before the court date, etc. She said why do they have the 30-day deadline because she felt it would cost more money if it had to go to court, etc. **Mr. Murphy** said this bill is designed to get that injured person an attorney that can begin to bring these matters to mediation. He said the classic example is if the insurance company has hired an independent medical examiner. He said that person is hired to take the strictest view against the insured claimant and a pro insurance view. He said they would send a notice to the claimant that says they will not get this care and in 85 percent of the cases this is where it ends. He said this bill is for those uneducated people who don't know any better and could come back and get the care if they had the right representation. He said currently most attorneys won't take these cases because the medical bills are so small that they can't make a living on that. He said if they do get involved and they win then the doctor is going to have to pay the attorney 20 percent. He said the 30-day rule has been a matter of court decision for some time. He said in the process of litigation the workers compensation court sets up discover deadlines that are usually 30 days prior to trial dates anyway. He stated if this deadline is 30 days they will already know the facts and he didn't think it would be a problem.

SEN. COCCHIARELLA said she has had only two cases that have gone to litigation and that was because she had worked very hard to settle the issues before hand, etc. She said the wording of this bill is very troublesome. She said she has had cases that have been postponed, etc. and she wondered when that 30-day deadline would be etc. She did not feel this language would work for the way it is intended. **REP. JENT** said he would work with her on this language to make it work. He stated the language says less than 30 days prior to the scheduled date of the hearing. He said the idea of this bill is to get the people and the doctors paid.

CHAIRMAN DALE MAHLUM asked what percentage do attorneys get paid exactly. **Mr. Murphy** replied that the law provides that an attorney gets 20 percent if the matter is settled and 25 percent if it is litigated. He said the other amounts that they heard pertain to the amount paid to the medical providers under the fee schedule. He said the reason they have different amounts is because there is scheduled payments for every single different type of treatment. He said the attorney fees will come out of the doctor's 70 percent reimbursement and therefore the doctor will only get about 45 percent and this is why doctors do not want to provide the care anymore.

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Closing by Sponsor:

REP. JENT stated this bill would provide fairness and equity for both members of the Montana Medical Profession and people who are injured on the job. He said it allows people to get the professional help that they need from an attorney, to get the medical bill paid and allows the insurance company to pay the costs not the doctor.

HEARING ON HB 315

Sponsor: REPRESENTATIVE BOB LAWSON

Proponents: Don Judge, HB 315
Wally Melcher, Helena Industries
Jerry Driscoll, AFL/CIO
Bill Roberts, Helena Industries

Informational Witnesses: John Andrew, Division of Labor Standards, Department of Labor and Industry

Opponents: None

Opening Statement by Sponsor:

REPRESENTATIVE BOB LAWSON, HD 80, FLATHEAD VALLEY, read the title of **HB 296**. He said the focus of the bill is on page 2, lines 12-17. He distributed an amendment to the bill, **EXHIBIT (bus58a01)** (HB031501.aem).

Proponents' Testimony:

Don Judge, Teamsters Local 190, rose in support of **HB 296**.

Wally Melcher, Helena Industries, said the bill creates an exemption into the state's prevailing wage law specifically for organizations who hold special wage certificates through the Federal Department of Labor. He discussed non-profit corporations and the type of benefits and wages that people with disabilities will receive. He said a disabled worker will be paid for their productivity and they compare what that worker will be able to accomplish compared to a non-disabled worker. He said this comparison is then converted to a percentage and is applied to the prevailing wage. He said their productivity is measured about every six months and the wages are adjusted to meet increased productivity, etc. He said they will never make less than the state's statutory minimum wage and they would also be paid the hourly health welfare benefit of \$1.22 per hour. He said many other states have this exemption in their prevailing wage laws and so does the Federal Department of Labor. He said by having the minimum wage they are protecting workers with disabilities.

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Jerry Driscoll, AFL/CIO, said these people who were once institutionalized are now productive citizens of our society.

Bill Roberts, Helena Industries, stated **HB 315** is a jobs bill for people with disabilities.

Opponents' Testimony: None**Informational Witness Testimony:**

John Andrew, Division of Labor Standards, Department of Labor and Industry, said the prevailing wage law deals with construction projects of roads, bridges, highways and buildings but it also encompasses non-construction services and custodial is a good example of that. He discussed 18-2-401. He said the word contractor needs to be deleted and employer substituted and this is the reason for the amendments.

Questions from Committee Members and Responses:

SENATOR KELLY GEBHARDT asked the sponsor why the bill is limited to non-profit organizations. **REP. LAWSON** said non-construction is the target of this bill because they didn't want to have it be so broad that it would create other concerns, etc. and they were targeting the group of people that they wanted to help. **Mr. Melcher** said they do not want this to become a discriminatory bill against persons with disabilities. He said this bill is tied to the special wage certificate program with the Federal Department of Labor and within that program it only applies to non-profit organizations.

SEN. GEBHARDT asked **Mr. Driscoll** how he felt if this included more than non-profits. **Mr. Driscoll** said these people are trained and they help them to get into semi-independent living, etc. He felt construction was too dangerous and if they gave it to other cleaning contractors they do not have the expertise to train these people on how to be productive.

CHAIRMAN MAHLUM asked if some of the individuals seen working in grocery stores come through their division. **Mr. Melcher** said their organization would work with them out of Helena and there are some other organizations that do work with mental health.

Closing by Sponsor:

REP. LAWSON closed by reminding them that the amendments to the bill must be attached in order for the bill to work. He asked for a DO CONCUR vote by the committee.

{Tape: 2; Side: B; Counter: 12.0}

HEARING ON HB 319

Sponsor: REPRESENTATIVE BOB LAWSON

Proponents: Rick Phyfer, Montana Credit Union Association
Annie Goodwin, Commissioner of Banking & Financial Institutions

Opponents: None

Opening Statement by Sponsor:

REPRESENTATIVE BOB LAWSON, HD 80, FLATHEAD VALLEY, offered an overview of the bill **EXHIBIT**(bus58a02).

Proponents' Testimony:

Rick Phyfer, Montana Credit Union Association, offered a section-by-section analysis of the bill, EXHIBIT 2.

{Tape: 3; Side: A; Counter: 7.2}

Annie Goodwin, Commissioner of Banking and Financial Institutions, offered her support of the bill.

Questions from Committee Members and Responses:

SENATOR GLENN ROUSH referred to Section 35 and asked if this section was talking about bonuses, etc. **Mr. Phyfer** said no, they are not talking about bonuses for management or employees. He said employees who do not make a lot of money may find it difficult to purchase professional attire. He said this program is used for that purpose and is set up as a loan with low interest, etc. He said it might also be used for technology, such as the purchase of a computer, if it helps them in their job and it could be bought with a loan.

SENATOR KEN HANSEN asked about Section 6 and why they would not want to have an annual examination. **Mr. Phyfer** said this provision would give the department some flexibility and would allow them to do risk based examinations. He said it would allow them to direct their resources in places where it is really needed. He said just because they do not have an examination for a year doesn't mean the department is still not checking reports, etc. He said the financial reports have to be sent to the financial commissioner regardless of an onsite examination.

SEN. ANDERSON also referenced Section 35 with regard to employees obtaining loans for an automobile necessary for driving to work and he wondered if each would have to be approved by the department. **Mr. Phyfer** answered that he didn't think the department would approve every single loan. He said it is hard to imagine that an automobile would be needed of an employee. He said this is to provide low interest loans for things truly needed, etc.

SEN. ANDERSON asked **Ms. Goodwin** if she thought there would be any problems with this section. **Ms. Goodwin** said they would be reviewing the criteria for these loans and it would be for such things as clothes and computers, but not for automobiles, etc.

SEN. COCCHIARELLA asked for background on any credit union failures, etc. in Montana. **Ms. Goodwin** said presently they do have 15 chartered credit unions in Montana and there are about two to four credit unions that they do hear concerns about. She said they have not closed a credit union for the last sixteen years.

SEN. COCCHIARELLA said there are two provisions that discuss mergers in this bill. She asked what kind of involvement does the commission have over this. **Ms. Goodwin** said if there is a voluntary merger they are required to submit a request to their division for review and they would be very much involved in that decision.

{Tape: 3; Side: A; Counter: 18.8}

SEN. ROUSH wanted to know if mergers are being encouraged between other states and those in Montana. **Ms. Goodwin** stated it is possible that there could be a merger with a credit union out of state and one located in Montana. One of the requirements would be some sort of bond, such as a manufacturing firm located in another state that opens up a facility in Montana and wants to open a branch of their credit union in Montana. She said this bill would also provide the department with the ability to coordinate their supervisory functions with those other states.

CHAIRMAN MAHLUM asked if there were mergers with other states would section 2 and 3 work in the bill. **Ms. Goodwin** said yes.

CHAIRMAN MAHLUM asked if this bill didn't bring credit unions more into an aspect with banking regulations. **Ms. Goodwin** said that is correct.

CHAIRMAN MAHLUM asked if credit unions are more restricted than they were before and they have provisions more like the banking act. **Ms. Goodwin** said the banking act of Montana is similar to what they are trying to accomplish here.

Closing by Sponsor:

REP. LAWSON thanked everyone who worked on the bill and asked for a do concur motion.

EXECUTIVE ACTION ON HB 315

Motion/Vote: **SENATOR CAROLYN SQUIRES** moved the amendments for HB 315 (HB031501.aem). **Motion carried 10-0.**

Motion/Vote: SEN. SQUIRES moved that HB 315 BE CONCURRED IN AS AMENDED. Motion carried 10-0.

EXECUTIVE ACTION ON HB 319

Motion/Vote: SEN. SQUIRES moved that HB 319 BE CONCURRED IN. Motion carried 10-0.

EXECUTIVE ACTION ON HB 122

Motion/Vote: SEN. ROUSH moved that HB 122 BE CONCURRED IN. Motion carried 10-0.

EXECUTIVE ACTION ON HB 174

Motion/Vote: SEN. COCCHIARELLA moved that HB 174 BE CONCURRED IN. Motion carried 10-0.

ADJOURNMENT

Adjournment: 11 A.M.

SEN. DALE MAHLUM, Chairman

SHERRIE HANDEL, Secretary

DM/SH

EXHIBIT (bus58aad)